



House of Commons

European Scrutiny Committee

The Work of the Committee in 2007

Twelfth Report of Session 2007–08



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European Scrutiny
Committee

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Committee in 2007**

Twelfth Report of Session 2007–08

*Report, together with formal minutes,
oral and written evidence*

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European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers —

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

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The staff of the Committee are Alistair Doherty (Clerk), Emma Webbon (Second Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Sir Edward Osmotherly (Clerk Adviser), Peter Harborne (Clerk Adviser), Michael Carpenter, (Legal Adviser) (Counsel for European Legislation), Dr Gunnar Beck (Assistant Legal Adviser), Anwen Rees (Committee Assistant), Allen Mitchell (Chief Office Clerk), James Clarke (Chief Office Clerk), Mrs Keely Bishop (Secretary), Dory Royle (Secretary), Sue Panchanathan (Secretary), Estelita Manalo (Office Support Assistant).

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The work of the Committee in 2007

Activity

1. This report covers our work from January to December 2007. Our core task was to examine on behalf of the House the EU documents deposited in Parliament, to assess their legal and political importance and to determine which should be debated.¹ During the year, 1,079 documents were examined,² 476 were deemed of legal and/or political importance, and 78 were recommended for debate, five of them on the Floor of the House. 31 debates took place in European Standing Committees (sometimes covering several documents) and three on the Floor of the House. We used our power to seek an opinion on a document from another select committee on two occasions.

2. In addition to the regular weekly reports drawing to the attention of the House those documents which are of legal and political importance, we carried out a number of stand-alone inquiries and produced individual reports on the *European enforcement order and the transfer of sentenced prisoners*;³ *Mobile phone “roaming” charges*;⁴ the use of *Article 308 of the EC Treaty*;⁵ the *European Commission’s Annual Policy Strategy for 2008*;⁶ and the *European Union Inter-Governmental Conference (IGC)*⁷ along with a follow-up report.⁸ We began an inquiry into the *Conclusions of the European Council and the Council of Ministers* on which we reported in early 2008. We produced 33 weekly Reports, containing 730 chapters on documents or groups of documents.

3. 2007 saw an increase in the number of oral evidence sessions, both from Ministers and outside organisations (15 sessions, compared to six in 2006), including one held during the summer recess. Our oral evidence sessions are set out in Table 1. We made two pre-Presidency visits to Portugal and Slovenia. We also visited Gibraltar and Macedonia. Members of the Committee participated in a number of conferences in a representative capacity. A list of visits is set out in Table 2. We hosted a tripartite meeting including Members of the House of Lords and UK MEPs, and a meeting of the EC-UK Forum of the European Union Committees in Westminster, the Scottish Parliament and the National Assembly for Wales.

4. There has been a pronounced increase in the level of press coverage received by the Committee in 2007. This is largely because of the high profile and timely nature of the

1 For a description of the Committee’s method of working, see The European scrutiny system in the House of Commons, which is on the Committee’s website and is available from the Committee’s staff.

2 These numbers are lower than those given in the sessional returns because, in the latter, documents are counted again if they are considered a second or subsequent time.

3 Nineteenth Report of Session 2006–07, HC 41-xix.

4 Twenty-fourth Report of Session 2006–07, HC 41-xxiv.

5 Twenty-ninth Report of Session 2006–07, HC 41-xxix.

6 Thirty-second Report of Session 2006–07, HC 519-I.

7 Thirty-fifth Report of Session 2006–07, HC1014.

8 Third Report of Session 2007–08, HC 16-iii.

inquiries that have been carried out, for example on the IGC and the European Reform Treaty, but is also in part due to the appointment at the end of 2006 of a press officer part of whose remit has been to cover European issues. This has given the Committee a higher profile, reflected in the award by *The Spectator* of “Inquisitor of the Year” to the Chairman of the Committee.

Table 1: Oral evidence taken by the European Scrutiny Committee in 2007

Category	Date	Subject	Main witness
Individual documents	24 January 2007	Fisheries quotas	Ben Bradshaw MP
Individual documents	28 February 2007	Mobile phone “roaming” charges	Margaret Hodge OBE MP
Individual documents	7 March 2007	i) Special Framework Assistance for traditional suppliers of bananas ii) scrutiny performance	Gareth Thomas MP
Individual documents	28 March 2007	Draft Council Framework Decision on the transfer of sentenced prisoners (including scrutiny performance)	Joan Ryan MP
Individual documents	9 May 2007	European Commission Annual Policy Strategy	Reijo Kemppinen, Brendan Donnelly, Neil O'Brien
EU policy areas	16 May 2007	Conclusions of the European Council and Council of Ministers	Sir Stephen Wall KCMG, LVO
EU policy areas	7 June 2007	i) Institutional Reform; ii) Council Conclusions	Margaret Beckett MP
Individual documents/EU policy areas	4 July 2007	i) European Commission Annual Policy Strategy; ii) Outcome of the European Council	Mr Jim Murphy MP
Individual documents	11 June 2007	Temporary Agency Workers Directive	Pat McFadden MP
Individual documents/EU policy areas	12 July 2007	i) European Commission Annual Policy Strategy; ii) Council Conclusions; iii) Outcome of the June European Council and the IGC mandate	Commissioner Margot Wallström
EU Policy areas	2 October 2007	Inter-Governmental Conference and the draft Reform Treaty	Mr Jim Murphy MP
EU Policy areas	16 October 2007	Inter-Governmental Conference and the draft Reform Treaty	David Miliband MP
Individual documents	17 October 2007	Consumer protection: sale of timeshare	Gareth Thomas MP
EU Policy areas	14 November 2007	Conclusions of the European Council and Council of Ministers	Lord Williamson of Horton GCMG, CB

Individual documents	12 December 2007	i) Agreement to a General Approach on Police Cooperation (scrutiny performance); ii) European Arrest Warrant	Meg Hillier MP
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Our overseas visits are set out in Table 2. The Annex to the report lists the meetings during those visits and indicates the subjects discussed.

Table 2: Visits by the European Scrutiny Committee in 2007

Date	Location	Purpose of visit
31 January – 1 February 2007	Brussels	Inquiry in to the use of Article 308/Meeting with MEPs
5 February 2007	Brussels	Joint parliamentary meeting on the Lisbon Strategy
11-12 February 2007	Berlin	COSAC Chairpersons meeting
21-23 March 2007	Florence and Rome	Conference to mark the 50 th Anniversary of the Treaty of Rome
13-15 March 2007	Berlin	COSAC XXXVII
21-24 May 2007	Lisbon and Gibraltar	Pre-Presidency visit and visit to examine the applicability of EC law to Gibraltar
11 June 2007	Brussels	Joint parliamentary meeting on the future of Europe
10 July 2007	Lisbon	COSAC Chairpersons meeting
14-16 October 2007	Estoril	COSAC XXXVIII
20-22 November 2007	Ljubljana and Skopje	Pre-Presidency visit and visit to EU accession country
3-4 December 2007	Brussels	Joint parliamentary meeting on the future of Europe

The Modernisation Committee's Inquiry

5. The Modernisation Committee's report into scrutiny of European matters in the House of Commons was published in March 2005.⁹ In last year's report we noted that the Government had not responded formally to the proposals of the Modernisation Committee and that progress on reform of the system of European scrutiny appeared to have stalled. There has still been no response to the Modernisation Committee's report. However, the Chairman has pursued the matter both in correspondence and in meetings with successive Leaders of the House as well as with the Minister for Europe and the Deputy Chief Whip. The main focus of these discussions was the need to move beyond the temporary arrangement whereby the European Standing Committees are currently nominated for each document referred to them by the European Scrutiny Committee and

⁹ Select Committee on Modernisation of the House of Commons, Second Report of Session 2004-05, *Scrutiny of European Business*, HC 465-I.

to develop an improved system to continue the scrutiny process on the documents referred to them.

6. Concern at the lack of progress reached a head in November when the Government made clear its intention to renew for the third time the temporary arrangements for the appointment of European Standing Committees. The Chairman and Committee members tabled an amendment to the Government's motion, the effect of which was to limit the renewal of the temporary arrangements to three months. That amendment was accepted by the Government and agreed to by the House, and the Government now accepts that it cannot continue with the temporary arrangements. We are expecting the Deputy Leader of the House to bring forward proposals in response to the Modernisation Committee's report during 2008. We look forward to seeing the Government's proposals.

7. One unforeseen consequence of the failure to nominate the permanent European Standing Committees has been the impact on lobbyists and interest groups. These groups play an essential part in parliamentary scrutiny. One of the gaps in our scrutiny process is the inability of such organisations to know where to go in order to bring their concerns to the attention of Parliament. The European Scrutiny Committee reports essentially on the legal and political importance of documents, but must do so in such a brief timescale that it may be difficult for outside bodies to make timely representations. The European Standing Committees examine the merits of proposals, and over a longer timescale, but given the current position under which the standing committees have no permanent membership, outside bodies and campaigning organisations may be at a loss to know where to direct their efforts.

Report and follow-up report on the Inter-Governmental Conference

8. On 9 October¹⁰ we published a report on the IGC and the draft Reform Treaty¹¹, meeting during the recess to ensure it was agreed before the House returned in order that this might best inform debate, and before the next informal meeting of the heads of state and governments of the EU Member States on 18 October. Given the importance which the Government attached to its "red lines" (as were first explained by the then Prime Minister in response to a question by the Chairman of this Committee), an aspect of our inquiry was to examine the extent to which these "red lines" had been held by the Government.

9. The draft Reform Treaty was not, strictly, a "European Union document" within the meaning of the Standing Orders, and was not depositable unless a Minister decided to do so.¹² In this case, the Committee reported on the Commission's Opinion on the IGC (which was a depositable document) and examined the Government's position which was set out in its White Paper and to which the Government referred us in its Explanatory Memorandum. We completed a detailed comparison of the Constitutional Treaty and the

10 Thirty-fifth Report of Session 2006–07, HC 1014.

11 Now known as the Lisbon Treaty.

12 S.O. No. 143 (i) to (v) refer, essentially to proposals under the Treaties, rather than to revisions of the Treaties themselves. However, a Minister may deposit with Parliament "any other document relating to European Union matters" — see SO No. 143 (vi).

new Reform Treaty. We concluded that the latter was “substantially equivalent” to the former. This major pronouncement, reinforced in questioning of the Foreign Secretary, ensured a high profile for the Committee’s unanimous report, which received widespread coverage in the media and was widely drawn on in the House. We further noted that no national parliament had been allowed time to carry out proper scrutiny, and elicited in our oral evidence session on 4 July the striking fact that Ministers were given just over 48 hours to consider a set of draft Treaty amendments in the so-called “IGC mandate” before these were agreed at the June European Council.

10. As an aid to assessing the Reform Treaty and its relationship with the Constitutional Treaty, we prepared a concordance table enumerating the provisions of the Constitutional Treaty and showing where these appeared in the Reform Treaty or in those provisions of the EU and EC Treaty which have remained unamended. We would normally expect Government to provide such an analysis but this was not forthcoming at that time. We notably found that the Reform Treaty introduced into the existing Treaties all the innovations resulting from the 2004 IGC (apart from I-8 on the flag, anthem and motto).

11. Having taken oral evidence from the Minister for Europe (Mr Jim Murphy) and the Foreign Secretary (Mr David Miliband), we published a follow-up report on 27 November¹³. This recommended a debate on the Floor of the House before the Treaty was signed. While the Government was unable to find time for such a debate, the two reports were tagged to a pre-European Council debate on 11 December. We expect that the reports will also inform debate in the New Year on the bill to ratify the Treaty.

Scrutiny issues

Article 308

12. An essential component of our scrutiny work is to examine the legal base for all EU proposals. In every case we consider whether the Community has competence for the proposal, and whether the correct legal base is cited by the Commission.

13. The use of Article 308 of the EC Treaty has been a cause for concern for some time. The Article may be used as the legal base for a proposal only if the proposed action is necessary to attain one of the Treaty’s objectives in the course of the operation of the common market and the Treaty has not provided the necessary power elsewhere.

14. In our report for 2006 on the *Work of the Committee*, we commented that Article 308 was being used for what appeared to be reasons of administrative convenience and that we and our predecessors had identified some proposals for legislation for which Article 308 was cited as the legal base but which, in our opinion, had no, or no substantial, connection with the operation of the common market. We also quoted a letter from the then Minister for Europe which revealed that the Government did not let doubts about a legal base stand

13 Third Report of Session 2007–08, HC 16-iii.

in the way of support for a proposal if it was expedient on other grounds to back the measure.

15. As a result of our concerns, we carried out an inquiry into the use of Article 308. We held an informal meeting with representatives of the Commission and the Council's Legal Services in Brussels, and received written evidence from the then Foreign Secretary (Rt. Hon Margaret Beckett MP) and Professor Dashwood of Sidney Sussex College, Cambridge. We published our report on 4 July 2007.¹⁴

16. We recognised that there were several possible ways to interpret Article 308. We and our predecessors had followed an approach ("the literal approach") similar to that taken by the courts in the UK on questions about the interpretation of Acts of Parliament. On this view, all the words in Article 308 should be given their plain meaning and the Article is not an appropriate legal base for a measure if it does not have a substantive connection with the operation of the common market. By contrast, the European Court of Justice (ECJ) gives the EC Treaty a "purposive construction" – it gives effect to what it understands to be the purpose of the Treaty.

17. In our report, we recognised the weight of opinion in support of the purposive interpretation of Article 308. At the same time, we concluded that it would be premature to dismiss the literal approach while the ECJ had not yet ruled definitively on the application of the reference in Article 308 to "in the course of the operation of the common market." Until such time, we agreed to draw to the attention of the House, any proposals where Article 308 was cited as the legal base, but which have no obvious connection to the common market. We also agreed that, having set out in detail the arguments for and against the various approaches, we "no longer need to rehearse them at length in reports on new proposals which have Article 308 as their legal base unless there are exceptional reasons to do so".

"Getting in early"

18. Each Spring the European Commission publishes its Annual Policy Strategy (APS) for the following year, indicating the likely policy initiatives that it will wish to pursue. After consultation with the other EU Institutions, this then translates into a Commission Legislative and Work Programme (CLWP) published towards the end of the year, providing a more concrete forward look agenda for the next twelve months.

19. We conducted an inquiry into the Commission's Annual Policy Strategy for 2008 as we considered that scrutiny of the document would give us an opportunity to examine the forward agenda as early as possible; to influence the UK Government in the Council's debate on the document; to engage with UK MEPs; and to influence the Commission's thinking before it adopted its work programme for 2008. The APS had also been given a

14 HC (2006–07) 41-xxix.

higher profile than in previous years, with both the Commission and COSAC keen for it to be examined by national parliaments.

20. We considered it would have been useful for those outside the EU Institutions, for the APS to be given more background information on the proposals it contained, a closer link between policy proposals and budgetary resources, and a retrospective evaluation by the Commission of the utility of the APS in preparing the way for the CLWP later in the year.

21. We sent the Commission a copy of our report and received a response which welcomed the Committee's input, noted the suggestions for improvements, and said that certain of them might be taken up in future years, for example to indicate more clearly the origin of initiatives, whether they are entirely new or are follow-up measures to existing policies.

22. We considered our inquiry into the APS to have been a useful exercise which provided an opportunity for Departmental Select Committees to engage with the Commission in its policy development, and for the public examination of the Commission's planning processes. We welcomed the Commission's efforts to increase openness and transparency, but we questioned whether the level of generality in the APS would stimulate the sort of debate the Commission said it would like to see. In terms of our own work, the APS assisted us only in so far as it alerted Committee Members to the issues on which the Commission was developing proposals; it does not help us perform the document-based scrutiny function given to us by the House.

Conclusions of the European Council and the Council of Ministers

23. The Commission frequently cites the European Council's Conclusions as the authority for a proposal. The Conclusions are clearly regarded as important by both the Council of Ministers and the Commission. Yet the draft of the Conclusions is not deposited for scrutiny by Parliament. We decided, therefore, to carry out an inquiry into the arrangements for the preparation, consideration and approval of the Conclusions of the European Council and the Council of Ministers. The Committee's report, which called on the Government to give Parliament the opportunity to scrutinise the Conclusions while they are still in draft, was published in February 2008.

Better Regulation

24. We note the Commission's ongoing commitment to better regulation, which involves the simplification of existing legislation by recast or codification,¹⁵ the repeal of obsolete legislation, and the reduction of administrative burdens. The Commission has also committed itself to submit all strategic and priority initiatives contained within the Legislative and Work Programme for 2008 to impact assessment. We recognise that the Commission cannot work in isolation on this – the Council, the Parliament and the individual Member States have a role to play in achieving better legislation and in meeting

¹⁵ A "recast" Directive or Regulation consolidates and substantially amends existing legislation, a "codified" Directive or Regulation consolidates existing legislation without substantive amendment.

the target of a 25% reduction in the administrative burden arising from EU legislation by 2012, which was agreed at the 2007 Spring European Council.

25. For 2008, the Commission has proposed 45 simplification initiatives, and the withdrawal of 30 pending proposals, although in our Report on the Commission's Legislative and Work Programme¹⁶ we commented that many of the latter would in any case have expired in due course. We will continue to take an interest in better regulation and look forward to the planned Strategic Review of Better Regulation scheduled for 2008.

The scrutiny process

Departmental performance

26. The most recent of the Government's six-monthly lists between January and June 2007 contained only five scrutiny overrides of documents which were still under scrutiny in the House of Commons. This is the lowest figure to date and marks a significant improvement on the number of overrides which occurred (12) during the same period of the previous session. We warmly welcome these improvements.

27. In 2007 our Chairman and members of the Committee's staff attended workshops in a number of Departments (Culture, Media and Sport, Home Office, International Development, Foreign and Commonwealth Office, and the Treasury) aimed at improving European Scrutiny performance. In addition, where Departments had breached scrutiny we held Ministers to account and in the course of 2007 Ministers appeared before us on three occasions to explain why the scrutiny reserve resolution had been breached by their Departments. We continued to look closely at two areas where scrutiny remained a cause for concern:

Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP)

28. In last year's *Work of the Committee* report we noted that there were understandable difficulties with documents relating to the CFSP and ESDP, where information has to be provided on what are at times fast-moving proposals. In such cases we sought to obtain from the FCO an agreement to provide us with advance warning of the Commission's thinking and explained that what was required was for the Government to be more forthcoming about progress on CFSP issues rather than wait until the negotiation process was over.

29. We had been in regular discussion for some time with the Government over the need to be informed at the earliest stage, so that it was not presented with a *fait accompli*. We cited examples during the course of 2006, such as planning the EU's role in post-settlement Kosovo, where we had been surprised to be presented with a scrutiny breach that was clearly avoidable, given that the Council had been discussing this topic for several months

16 Sixth Report of Session 2007-08, HC 16-vi, chapter 12.

already. We told the Government that we expected it to be more forthcoming about CFSP issues and said that this would be monitored closely during the course of 2007.

30. We are pleased to report that there have been notable improvements in 2007. We have received regular “early warning” letters from the Minister for Europe on CFSP issues. In addition, the Ministry of Defence agreed revised guidelines for scrutiny of ESDP proposals which we regarded as being “comprehensive, well-ordered and well-written”.¹⁷

“General Approach”

31. A “general approach” is an agreement to a text before its submission to the European Parliament for its opinion. The Government has argued that a general approach is not covered by the Scrutiny Reserve Resolution because it relates to an agreement to a proposal which has not completed all its legislative stages. The Scrutiny Reserve Resolution does not expressly mention general approaches, whereas it states that reference to agreement includes “political agreements” and “common positions” as agreements in which the Government should not take part if the document concerned is still under scrutiny. The Cabinet Office Guidance to Departments says:

“Working with the Committees to complete scrutiny before a general approach is ... the best way to ensure that the spirit of the Scrutiny Reserve Resolution is not breached”.

32. Over the course of the last 12 months, the issue has become a concern of the Committee. In April 2007, we published a report which closely examined the agreement, despite three written warnings, by a then Home Office Minister (Joan Ryan) to a general approach on a Framework Decision on a European enforcement order and the transfer of sentenced persons. We concluded that:

“The question of whether an agreement has been reached in the Council should not be approached in a spirit which gives higher regard to form than substance and purpose, but in a way that corresponds to common sense and the natural and ordinary meaning of words ... The concept of the ‘general approach’ should not be used as a device for achieving substantial agreement in the Council, whilst maintaining a fiction before Parliament that no such agreement has been reached, because this would effectively bypass Parliamentary scrutiny ...

In the light of the experience of this case, we now make it clear that we reject any general proposition that agreement to a ‘general approach’ does not amount to agreement for the purpose of the Resolution of the House on the Scrutiny of European Business, or that the reaching of a ‘general approach’ is not subject to that Resolution. In a European Union of 27, it seems to us to be quite unreal to suggest that the reaching of a ‘general approach’, after all the bargaining of national positions there will have been, does not, in fact, amount to substantive agreement.”

33. We were disappointed therefore when, towards the end of 2007, Home Office Ministers agreed to further general approaches when the documents in question remained under

¹⁷ Letter of 16 May 2007 from Chairman of the European Scrutiny Committee to the Secretary of State for Defence.

scrutiny. In December we took evidence from the Parliamentary Under-Secretary (Meg Hillier) on her agreement to a general approach on a draft Council Decision on cooperation between the special intervention units of the Member States. We later took evidence from the Minister of State for Security, Counter-terrorism, Crime and Policing (Mr Tony McNulty) in January 2008 on his participation in general approaches on a Draft Decision establishing the European Police Office.

Cooperation with Departmental Select Committees

34. We recognise that we can obtain valuable advice from the Departmental Select Committees (DSCs) which strengthens the scrutiny process and, indeed, Standing Order No. 143 gives the Committee the power to call for an opinion from a DSC. We have formally used this power on two occasions in the past year: once on the White Paper on Sport, on which the Culture, Media and Sport Committee have subsequently decided to carry out an inquiry; and, secondly, on EU-US aviation agreements where the Transport Committee happened to be holding a pre-Council evidence session with the Minister and at very short notice sent a constructive and speedy reply which significantly enhanced our scrutiny of the document, and which we published with our Report on the proposed legislation.

35. Cooperation with DSCs can take many other forms. For example, we send their Clerks copies of the briefing our advisers produce on all EC and EU documents and draw attention to key proposals coming forward. This is an effective way to help DSCs spot when we are dealing with issues on which they are conducting an inquiry or in which they are otherwise interested. A good illustration in 2007 was on Galileo on which the Transport Committee and the European Scrutiny Committee cooperated closely at official level.

36. In addition, we sent the Commission's 2008 Annual Policy Strategy to each DSC, inviting views on the items relevant to their work, and we provided a list of proposals broken down by Department when we reported on the Commission's 2008 Legislative and Work Programme. This ensures that DSCs are aware of forthcoming proposals at the very earliest stage of the scrutiny process.

37. Finally, we wrote to the Cabinet Office about the fact that when Government Departments carried out consultations on EU documents, in particular on Commission Green Papers, they did not appear to consult the relevant DSC, nor invite them to give an opinion on the document in question. We considered this an important oversight and have ensured that Government Departments include DSCs in consultations on EU proposals.

Parliamentary networking

COSAC

38. COSAC is the body which brings together members of the European affairs committees of national parliaments. The Committee (with the Lords Select Committee on the European Union) has long been concerned to ensure that the agendas of COSAC's

biannual meetings should be derived from its role as a body for exchanging information, in particular on the practical aspects of parliamentary scrutiny. Examining whether EU proposals comply with the principle of subsidiarity has been part of our own scrutiny process for as long as the principle has been formulated. The Lisbon Treaty, once ratified, will provide a formal role for national parliaments to examine legislative proposals for their compliance with the principle of subsidiarity, and to register objections if appropriate.

39. During 2006 national parliaments conducted two checks of legislative proposals in the Commission's Legislative and Work Programme for subsidiarity and proportionality issues. These were carried out on a voluntary basis under the auspices of COSAC and the provisions of the existing Treaties. The two Commission proposals examined were on jurisdiction and applicable law in matrimonial matters and a Commission Proposal on the liberalisation of Community postal services. These checks stimulated an exchange of views and useful practices between national parliaments in the COSAC framework.

40. The Commission's Legislative and Work Programme for 2007 was adopted on 24 October 2006, The German Bundestag and Bundesrat made no proposals for national parliaments to identify any legislative proposals from the 2007 work programme for subsidiarity and proportionality checks as part of its programme for its six-monthly presidency of COSAC (January–June 2007). The Portuguese Presidency acceded to a request that the Commission proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism be selected as an appropriate subject for the subsidiarity check, to test the new mechanism proposed in the Lisbon Treaty signed on 13 December. The proposal was adopted by the Commission on 6 November and deposited in Parliament on 16 November. The Committee reported its findings in January 2008.

41. The selection of proposals for the COSAC subsidiarity check for 2008 is to be based on the Commission's 2008 Legislative and Work Programme, adopted on 23 October 2007. Since legal migration might be thought of as a core sovereign issue, the Committee has suggested the "Proposal for a Directive on the conditions of entry and residence of seasonal workers" as a suitable candidate for the next subsidiarity check.

42. The Chairman and Committee members have played an active part in COSAC debates and in the formulation of the COSAC Conclusion, which is addressed to all EU Institutions. At the Lisbon COSAC meeting in October, the European Scrutiny Committee delegation was instrumental in securing an amendment to the draft Conclusion to ensure that the reference to "*rights and obligations*" of national parliaments in the context of the Lisbon treaty was changed to remove the reference to *obligations*. The Committee's view as expressed in its report on the European Union Intergovernmental Conference is that there can be no obligation on a national parliament to contribute actively to the good functioning of the Union. These are matters of entitlement, not obligation, and the Committee ensured that the COSAC Contribution reflects that fact.

Tripartite Meetings

43. In cooperation with the House of Lords European Union Committee we continued to hold regular meetings with UK MEPs. Subjects covered included (in January 2007) the Commission's Annual Policy Strategy, including climate change and better regulation, and institutional reform; and (in November 2007 and hosted by this Committee) institutional reform, the EC Budget Review and Galileo. We regard these meetings as a valuable way of exchanging views and information.

Devolved Administrations

44. In December 2007, we revived the EC-UK Forum, a meeting of the Chairs/Convenors of the EU affairs/scrutiny committees of the House of Commons, Lords and Devolved Assemblies to look at handling of EU business. Subjects covered included working practices, the impact of EU proposals on different legal jurisdictions, and subsidiarity. We discussed the importance of being alerted by Devolved Assemblies to proposals which might be of concern to them, even in general terms, taking account of the very tight timetables to which this Committee works.

45. An important innovation during 2007 was the requirement to include in every Government Explanatory Memorandum, at the Committee's request, a positive statement to confirm whether the Devolved Administrations had been consulted where they had an interest in a proposal. This was agreed by the Cabinet Office and is included in the brief prepared by our advisers. As all EMs are now publicly available on the Cabinet Office website,¹⁸ this is also of use to our colleagues in the Devolved Assemblies. We will continue to examine how we can work together to improve scrutiny processes.

Direct transmission of documents from the European Commission

46. Since September 2006 the European Commission has sent Commission draft legislation and consultation papers directly to national parliaments of Member States for their consideration.¹⁹ National parliaments are invited to submit their reactions to the Commission "so as to improve the process of policy formulation".²⁰ The Commission's initiative was welcomed by the June 2006 European Council. The European Council asked the Commission "to duly consider comments by national parliaments—in particular with regard to the subsidiarity and proportionality principles."²¹ The European Council also encouraged national parliaments to "strengthen cooperation within the framework of the Conference of European Affairs Committees (COSAC) when monitoring subsidiarity", an exhortation which we endorse.

18 <http://europeanmemorandum.cabinetoffice.gov.uk>.

19 The Commission has been required to send its consultation documents (Green and White Papers and Communications) to national parliaments since the entry into force of the Treaty of Amsterdam in May 1999.

20 Communication from the Commission to the European Council: A Citizens' Agenda: Delivering Results For Europe, COM(06) 211, 10.05.2006, p. 9.

21 Brussels European Council, 15–16 June 2006, Presidency Conclusions, para. 37.

47. In principle national parliaments now receive directly, and at the same time, all legislative proposals and consultation documents which the Commission sends to the European Parliament and to the Council.²² The Commission invites observations on its proposals from national parliament chambers or committees to be submitted via the Secretariat-General, and has undertaken to respond in writing to each submission.

Handling in the House

48. The Commission initiative in transmitting its legislative proposals directly to national parliaments is welcome, particularly for those parliaments where legislative proposals and consultation papers are not routinely deposited for scrutiny by national governments. As we reported last year, however, the practical implications of the Commission's initiative for the House are few. The long-standing arrangements for scrutiny of European documents require the Government to deposit in Parliament copies of each Commission legislative proposal and consultation paper within two days of their receipt in London, with an Explanatory Memorandum to be deposited within a further ten days. In effect, therefore, the Committee already receives the documents the Commission has now begun to transmit directly, together with a memorandum setting out the Government's view.

49. What is potentially of interest to the Committee is the Commission's undertaking to consider opinions submitted to it by national parliaments, and its implicit undertaking to take into account the views of national parliaments when formulating policy. We expect COSAC to play a leading role in examining how the Commission is fulfilling its commitment.

50. We used the formal procedure for the first time in 2007, in sending our report on the Annual Policy Strategy direct to the Commission. The response, received some four months later, demonstrated that the Commission had considered our comments and recommendations carefully, if somewhat belatedly. We reiterate, though, that our responsibility is to hold UK Ministers to account. We would not want any interaction with the Commission to muddy the clear lines of parliamentary accountability that we effectively exercise. We envisage that we will make representations to the Commission where appropriate, especially where proposals have not been withdrawn but for which there is little support.

Pre- and post Council scrutiny

51. The Government has agreed to issue a written Ministerial Statement shortly before each Council meeting confirming the agenda, the reason why each of the items is on the agenda and the Government's general position on them. There is a further written Ministerial Statement on the outcome of Council meetings. Last year, we noted that the quality of these statements has been variable to say the least. In the worst cases, Council agendas had simply been amended to list the matters discussed and decisions taken rather than

22 An exception is made for classified material.

providing a clear statement not only on the discussions held and decisions taken but also on the views expressed and positions adopted by Ministers and by other Member States.

52. In January we wrote to the Cabinet Office stressing that it was important for Departments to provide comprehensive pre- and post- Council statements. We consider that failure to do so undermined the procedure, and might lead to occasions where the Committee would follow up with further questions or possibly invitations to Ministers to appear before the Committee.

53. In May we wrote to the Cabinet Office again, to remind Departments of the need to provide annotated agendas as early as possible prior to each formal Council of Minister's meeting. This procedure enables the staff of the Committee to track the progress of business during each Presidency, and to enable issues to be identified on which it would be appropriate for the Committee to seek further information either by written or oral evidence.

54. We are pleased to see a steady improvement in the quality of pre- and post-Council statements and the provision of annotated agendas, but regret that there is an uneven pattern between Departments. Notably, some Departments still think it inappropriate to state the positions adopted in the Council by other Member States. Such reticence is in our view pointless and we will continue to monitor this in the coming months and will take further action where necessary.

Conclusion

55. **We have seen a marked increase in the work of the Committee in 2007, both in terms of the number of evidence sessions and inquiries, and this has been reflected in a higher media profile. The inquiry into the Inter-Governmental Conference and the draft Reform Treaty dominated the Committee's work in the second half of the year. We expect the two reports we published to inform debate on the European Union (Amendment) Bill as it is considered by the House in 2008.**

56. **We put pressure on the Government to clarify its position on general approaches and the Scrutiny Reserve Resolution. We will continue to pursue these issues in 2008. We also expect proposals from the Government on modernisation of European scrutiny which we look forward to receiving.**

57. **2007 saw an increase in the attention paid to European Union matters by Departmental Scrutiny Committees, which we welcome. Of note were the reports of the Home Affairs Committee on *Justice and Home Affairs Issues at European level*²³; the International Development Committee on *EU Development and Trade Policies: An update*,²⁴ and the Transport Committee on *Galileo: Recent developments*.²⁵**

23 Home Affairs Committee, Third Report of Session 2006–07, *Justice and Home Affairs Issues at European Union Level*, HC 76-I.

24 International Development Committee, Fifth Report of Session 2006–07, *EU Development and Trade Policies: An update*, HC 271.

58. As always, our work in 2008 will be largely determined by what documents are deposited. The Commission's Legislative and Work Programme for 2008 outlines 26 strategic initiatives grouped together into 12 packages which it commits itself to delivering during the year, and 61 priority initiatives grouped into 49 packages which it says will be delivered over the next 12–18 months. The Strategic Initiatives include proposals on external relations, better regulation, energy and climate change, migration and asylum, and health.

Annex

Meetings and subjects discussed during the Committee's overseas visits

Portugal and Gibraltar, 21-24 May 2007

21 May

Lisbon

Embassy briefing.

22 May

Economy Minister, Dr Manuel Pinho: energy; climate change; Lisbon Strategy; European Institute of Technology.

Justice Minister, Alberto Costa: procedural rights; powers to define criminal offences; mutual recognition; enhanced cooperation in JHA matters; fight against terrorism.

EU Affairs Committee: working practices; Constitutional Treaty; enlargement; energy; social care and pensions; external affairs.

EU commentator, Dr António Vitorino: Constitutional Treaty; external affairs (including EU-Brazil, EU-Africa, Euromed); migration; Schengen; JHA issues.

Department for European Affairs: Deregulation; Working Time Directive; The Future of Europe.

Dinner with politicians, academics, commentators and journalists.

23 May

President of the Parliament, Dr Jaime Gama

State Secretary for European Affairs, Dr Lobo Antunes: Presidency priorities; Constitutional Treaty; trio-Presidency.

State Secretary for Internal Administration, Dr José Magalhães: Rapid border intervention teams; legal migration; EU-Africa summit; Treaty of Prüm.

24 May

Gibraltar

Governor of Gibraltar, Robert Fulton: EC legislation; immigration; financial services.

Chief Minister, Peter Caruana: EU aviation agreements; mixed competence agreements; implantation of EU legislation and compliance; benefits and disbenefits of EU membership.

Dr Joseph J Garcia, Deputy Leader of the Opposition: Gibraltar as an independent jurisdiction in international conventions; pensions; Cordoba agreement.

Slovenia and Macedonia, 20-22 November 2007

20 November

Ljubljana

Embassy briefing.

EU Affairs Committee: working practices; trio-Presidency experience; Presidency priorities; external affairs; energy; VAT harmonisation.

State Secretary, Government Office for European Affairs, Mr Janez Lenarcic: Presidency programme; Lisbon Treaty; enlargement; Western Balkans; Lisbon Strategy; energy and climate change; Justice and Home Affairs.

Dinner with EU commentators

21 November

Minister, Head of the Government Office for Growth, Dr Ziga Turk: Slovenian development; Lisbon Strategy; market liberalisation.

State Secretary, Ministry of Finance, Mr Žiga Lavrič: ECOFIN priorities; Lisbon Agenda; 10th Anniversary of the ECB; expansion of the Eurozone; Solvency II; EC Budget Review; Gaileo; Slovenia's experience of the Euro.

Skopje

Embassy briefing.

EU Affairs Committee: working practices; EU and NATO accession prospects; Commission's enlargement report and reported shortcomings (the role of Parliament, judicial and police reform, and public administration).

Ljubisa Georgievski, Speaker of the Parliament accompanied by Party coordinators.

Reception hosted by the British Ambassador.

22 November

Deputy Minister for Foreign Affairs, Zoran Petkov: NATO prospects; name issues; Kosovo; role of Parliament and the civil service.

Prime Minister, Mr Nikola Gruevski: EU and NATO candidacy; administrative capacity; economic progress; Albanian representation in the Government; Kosovo; name issue.

Deputy Prime Minister for European Integration, Mrs Gabriela Konevska: Commission's enlargement report; technical progress towards EU accession; relationship between Parliament and Government; resources; civil service reform; Kosovo.

Formal Minutes

Wednesday 30 January 2008

Members present:

Michael Connarty, in the Chair

Mr Adrian Bailey

Mr David S Borrow

Ms Katy Clark

Jim Dobbin

Mr Greg Hands

Mr David Heathcoat-Amory

Mr Keith Hill

Kelvin Hopkins

Angus Robertson

Mr Anthony Steen

Richard Younger Ross

2. The Work of the Committee in 2007

Draft Report (*The Work of the Committee in 2007*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 58 read and agreed to.

Annex agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

[Adjourned till 6 February at 2.30 p.m.]